Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1150.

PATENTS MANAGEMENT CORPORATION, et al.,
Petitioners,

v.

TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The Opinion and Orders of the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit are adequately cited and set forth in the Petition and in the Appendix thereto.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF THE QUESTION PRESENTED.

Whether the Penn Central Transportation Company Reorganization Court properly exercised its discretion in refusing to permit individual bondholders to intervene generally in the Reorganization Proceedings where (a) the bondholders represented only $42,000 in bonds out of the total outstanding long-term indebtedness of the Debtor of over $1,900,000,000, (b) the individual bondholders' interests are already represented by various mortgage indenture trustees who have been permitted to intervene, and (c) the individual bondholders are participating in proof of claim proceedings.

STATUTE INVOLVED.

The statute governing intervention in railroad reorganization proceedings is Bankruptcy Act Section 77(c)(13), 11 U. S. C. § 205(c)(13). The pertinent portion of the statute is set forth *infra* at p. 7.

COUNTERSTATEMENT OF THE CASE.

Petitioners seek the review of the *Per Curiam* affirmance, by the United States Court of Appeals for the Third Circuit, of Orders Nos. 139 and 309 of the United States District Court for the Eastern District of Pennsylvania (Honorable John P. Fullam, J.), sitting as the Penn Central Transportation Company Reorganization Court ("Reorganization Court") under Bankruptcy Act Section 77, 11 U. S. C. § 205. These Orders denied petitioners leave to intervene generally in the Reorganization Proceedings. The individual petitioners, purporting to constitute themselves as the Penn Central Bondholders Protective Committee, own $42,000 of various series of bonds of the Debtor. The Debtor as of December 31, 1970 had $1,901,761,777 outstanding long-term indebtedness.[1] The petitioners therefore own about .00022 of 1% or 1/45,280 of the outstanding long-term indebtedness of the Debtor.

A hearing was held on November 16, 1970 in the Reorganization Court with reference to 44 intervention petitions, including the instant petitioners' original application for leave to intervene generally in the Reorganization Proceedings. In answering these various intervention petitions, the Trustees of the property of the Debtor ("the Trustees") recommended that the proceedings be expedited by the Reorganization Court's designation of specified parties who could adequately represent the various groups of persons seeking general intervention. Specifically, the Trustees recommended that individual bondholders be represented by the various mortgage indenture trustees who were seeking intervention in the Reorganization Proceed-

1. This figure as to Debtor's long-term indebtedness is obtained from page 201 of the Annual Report of the Debtor (Railroad Annual Report Form A) filed with the Interstate Commerce Commission for the year ending December 31, 1970.

ings. The Trustees also recommended that creditors of the Debtor present their claims in proof of claim proceedings, thereby rendering manageable the participation of such persons in the Reorganization Proceedings.

On January 25, 1971, the Reorganization Court entered Order No. 134 in which it permitted intervention by mortgage trustees, representatives of various labor organizations, various governmental bodies, the Penn Central Company (sole shareholder of the Debtor), the Trustee of the New York, New Haven & Hartford Railroad Co., and certain other parties. Also on January 25, 1971, the Reorganization Court entered Orders Nos. 135 through 146, denying the petitions to intervene of a variety of petitioners, including the petitioners herein as well as creditors owed $700,000 and $768,000 respectively by the Debtor. Subsequently, the petitioners herein renewed their intervention petition in the Reorganization Court on June 3, 1971. In Order No. 309, the Reorganization Court again denied petitioners leave to intervene in the Reorganization Proceedings for the reason that "petitioners have insufficient interest in these proceedings to be permitted to intervene generally."

On January 26, 1971, the Court of Appeals affirmed Orders Nos. 139 and 309 of the Reorganization Court. In view of the vastness of the Penn Central Transportation Company Reorganization, the Court of Appeals noted the need to keep intervention to manageable proportions by the Reorganization Court's designation of representative interveners covering the various types of the Debtor's 150,000 creditors. The Court of Appeals observed that the Reorganization Court and the Trustees were doing everything possible to expedite the Reorganization Proceedings, while protecting the rights of all of the Debtor's creditors, including the instant petitioners. Finally, the Court

pointed out that individual creditors, such as the instant petitioners, had the opportunity to obtain a hearing before the Reorganization Court on any particular problems specifically affecting such creditors.[2]

2. The Opinion of the Court of Appeals is reproduced at pages A21-A23 of the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT.

I. This Case Was Correctly Decided by the Courts Below.

A. In Order to Expedite the Reorganization Proceedings and to Protect All Interests in the Debtor's Estate, the Reorganization Court Must Limit the Number of Intervening Parties to Manageable Proportions.

This Court has mandated the expedition of railroad reorganization proceedings to the maximum extent possible. *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648 (1935). The Reorganization Court's reasonable control on the number of general interveners directly subserves the goal of expedition. Accordingly, as recognized by petitioners, the question of whether or not individuals should be permitted to intervene in the Reorganization Proceedings must lie within the sound discretion of the Reorganization Court.[3]

These principles are especially applicable to the present reorganization, which is the largest in history. As noted by the Court of Appeals, the Debtor has $1,906,761,767 outstanding long-term debt and other liabilities and deferred credits totalling $582,276,848. These obligations are distributed among over 150,000 creditors. In this case it is not only desirable but absolutely necessary that intervention in the Reorganization Proceedings be held to manageable proportions. It is essential that the various interests be grouped and classified for purposes of representation. The Courts below recognized that the expedition of the Re-

3. It is indeed of some doubt whether petitioners' contentions are even properly before the appellate courts, since the discretionary denial of intervention in railroad reorganization and other proceedings is generally not appealable. See, e.g., *Pennington v. Missouri Pacific Railroad Co.*, 239 F. 2d 332, 335 (8 Cir. 1956); *Brotherhood of Railroad Trainmen v. Baltimore & O. R. Co.*, 331 U. S. 519, 524 (1947).

organization Proceedings requires that creditors, such as the instant petitioners, be represented by intervening mortgage indenture trustees.

This position is supported by the discretionary provisions governing intervention in railroad reorganization proceedings:

> ". . . . The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, *upon petition therefor and cause shown, any such person* or any other interested party *may be permitted to intervene.* The judge may, after hearing, make reasonable rules defining the matters upon which notice shall be given to other than interveners and the manner of giving such notice." Bankruptcy Act Section 77(c)(13), 11 U. S. C. § 205(c)(13) (emphasis supplied).

Although this statute accords to persons (such as the instant petitioners) the right to be heard at any time, the privilege of intervention is necessarily subject to the discretion of the Court. See 5 Collier on Bankruptcy ¶ 77.08, p. 491 (14th ed. 1970).

In denying petitioners' leave to intervene, the Reorganization Court adhered to the policy, repeatedly recognized by the courts, of consolidating representation of bondholders' interests in order to advance reorganization proceedings to as speedy a conclusion as possible. In *In re Denver and R. G. Western R. Co.*, 13 F. Supp. 821 (D. Col. 1936), one of the earliest cases involving intervention under the present railroad reorganization statute, the Court allowed intervention by mortgage indenture trustees but

disallowed intervention by the trustee of a family trust representing a large number of bondholders. In allowing intervention by the mortgage indenture trustees, the Court stated:

> "Mortgage trustees . . . represent thousands of security holders, whose interests they are not only empowered, but required, to protect in any legal proceedings affecting them, and in the absence of allegations of fraud, refusal of the trustee to act, or other good cause, bondholders may, in the discretion of the court, be refused permission to become parties. Convenience dictates that they be represented as a class rather than individually." 13 F. Supp. at 824.

The Court found that although the family trust represented a large amount of bonds, this fact was not compelling with regard to the question of intervention. In denying intervention to representatives of the family trust, the Court stated:

> "To allow them in at this time would require the granting of the same privilege to every individual bondholder, which, for the reasons already stated, is not necessary or desirable. As Judge Faris has said, in the Matter of Missouri Pacific R. Co. [unreported opinion]: 'Heretofore, ex gratia, I have allowed general interventions by persons and aggregations, who were at most entitled to come in specially. This action has had the effect to induce numerous others to seek the privilege of general intervention; so that, the case has become unconscionably complicated, and if this grace is broadened, it will ultimately become so unwieldy as to preclude orderly administration.'" 13 F. Supp. at 824.

Recently, the courts again have reiterated that where a class of bondholders is adequately represented in railroad reorganization proceedings, the orderly conduct of the proceedings justifies the court's denial of intervention to individual members of that class of bondholders. See *In re Central Railroad Company of New Jersey*, 429 F. 2d 507 (3 Cir. 1970), cert. denied 401 U. S. 938 (1971). In this case, the Court of Appeals upheld District Judge Augelli's discretionary denial of intervention to a bondholder's committee representing $345,000 in bonds since another committee, representing $3,500,000 in bonds, and already granted intervention, would adequately represent the interests of the class of bondholders and intervention by additional members of the class would merely complicate the reorganization. The following language of Judge Augelli's opinion is particularly relevant to the instant petitioners' effort to intervene in the Penn Central Transportation Company Reorganization Proceedings:

> "The principal objective of a Section 77 proceeding is the speedy and economical reorganization of a railroad. Every effort should be made to simplify procedures to attain that end. Intervention necessarily carries with it the addition of another and independent party to the litigation, represented by its own attorney, and in many cases, also by counsel. In exercising its discretion in matters of intervention, the Court must be mindful of the duplication of time, effort and expense that would be occasioned by the unnecessary addition of parties to the litigation. *To allow every possible interested party or group to intervene in this case would seriously curtail the orderly conduct of the proceedings and greatly increase the expenses of administration*, and this Debtor, as must be evident to all parties, can ill afford added financial burdens." *In re*

Central Railroad Company of New Jersey (D. N. J., unreported Memorandum and Order entered October 1, 1969) (emphasis supplied).

Similarly, in the instant case, the denial of general intervention to creditors such as the petitioners is consistent with the objective of expediting the reorganization proceedings. By thus holding intervention to manageable proportions, the Reorganization Court has facilitated the administration of the Debtor's estate for the benefit of all interested parties.

B. The Appropriate Method for Petitioners' Individual Participation in the Reorganization Proceedings Is Through Proof of Claim Proceedings Rather Than Through General Intervention.

In view of the vast number of bondholders and other creditors involved in large railroad reorganization proceedings, the courts have already defined the scope of individual bondholders' separate participation in such proceedings. This separate representation centers on the proof of claim procedures outlined in Bankruptcy Act Section 77(c)(7), 11 U. S. C. §205(c)(7). The predominant role of proof of claim proceedings for separate representation of bondholders' interests is emphasized in *Blumgart v. St. Louis-San Francisco Ry. Co.*, 94 F. 2d 712 (8 Cir. 1938), cert. denied 304 U. S. 567 (1938). In that case, three individuals, purporting to act as a bondholder's committee, sought intervention in railroad reorganization proceedings. The Court regarded intervention as unnecessary and inappropriate, in view of the statutory provision for proof of creditors' claims and the desirability of unitary representation of bondholders by mortgage indenture trustees in reorganization proceedings. In discussing the proof of claim subsection of the statute (Bankruptcy Act, Sec. 77

(c)(7)), the Court indicated that the statute provides adequate representation of bondholders' interests:

> ". . . this subsection provides a required way in which the bondholders must act to have their rights protected—either by the trustee filing a claim for all of the bondholders or the bondholders filing for themselves.
>
> Either of these ways affords full protection to the right of the bondholders to be represented in the proceeding. This remedy being open, there is no necessity for any of these appellant bondholders to intervene 'specially' for the purposes stated in the proposed petition in intervention." 94 F. 2d at 716-717.

As recognized by the petitioners, $36,000 of their $42,000 of bonds are already represented in the Reorganization Proceedings by mortgage indenture trustee interveners. Thus, approximately 86% of the petitioners' bonds are represented by parties in the proceedings. To permit double representation for $36,000 in bonds would be inconsistent with orderly administration of the Debtor's estate. Moreover, the petitioners have filed proofs of claim regarding their entire holdings of $42,000 in bonds. In filing proofs of claim, the petitioners have utilized the recognized method for bondholders' individual participation in railroad reorganization proceedings. As confirmed by the *Blumgart* case, *supra*, participation in the proof of claim proceedings alone affords the petitioners adequate representation in the Reorganization Proceedings.

II. Petitioners Have Cited No Authorities Which Support Their Alleged Constitutional Right to Intervene in the Reorganization Proceedings.

Petitioners in their Petition cite ten cases, none of which involve intervention in reorganization proceedings

and all of which are clearly distinguishable from the present case.

Ackerman v. United States, 178 F. 2d 983 (5 Cir. 1949), was a naturalization case in which it was held that a motion to vacate a denaturalization order was properly denied four years after the order, where there had been no appeal from the original order.

Conner v. Finch, 314 F. Supp. 364 (N. D. Ill. 1970), upheld the constitutionality of a provision of the Social Security Act relating to computation of benefits under the program for aid to families with dependent children.

In *Eisen v. Carlisle*, 391 F. 2d 555 (2 Cir. 1968), an action brought by an odd-lot trader under the Sherman Act and the Securities Exchange Act of 1934, the Court reversed an order dismissing the action as not maintainable as a class action.

Galvan v. Press, 347 U. S. 522 (1954), was a habeas corpus proceeding in which the Supreme Court held that Congress had the right to make present or former membership in the Communist Party a basis for deportation of an alien.

Ginsberg v. Lindel, 107 F. 2d 721 (8 Cir. 1939), limited the retroactivity of rent priority provisions of the Chandler Act (Bankruptcy Act Section 64(a), 11 U. S. C. § 104(a)). *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555 (1935), voided the Frazier-Lemke Act, which allowed a bankrupt farmer to retain mortgaged farm property through deferred payments or under court supervision, if creditors had not consented to the farmer's composition under Bankruptcy Act Section 75, 11 U. S. C. § 203. *Thompson v. Sivalt*, 95 F. 2d 214 (8 Cir. 1938), upheld the constitutionality of treating railroad employees' personal injury claims as an operating expense in railroad reorganization proceedings. These cases were cited by the peti-

tioners for the proposition, not at issue in this case, that the Bankruptcy Act is subject to the Fifth Amendment of the United States' Constitution.

L. B. Wilson, Inc. v. Federal Communications Commission, 170 F. 2d 793 (D. C. Cir. 1948), involved a radio broadcasting licensee's hearing before the F. C. C. prior to the Commission's granting of an application for construction of a new broadcasting station which would allegedly interfere with the original licensee's transmissions.

Washington v. United States, 401 F. 2d 915 (D. C. Cir. 1968), affirmed a conviction for violation of lottery laws despite an allegation that lottery paraphernalia, admitted in evidence, had been obtained as a result of an illegal search.

Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U. S. 100 (1969), was a patent infringement action in which the Supreme Court sustained the granting of certain injunctive relief and remanded for further proceedings regarding possible additional injunctive relief.[4]

Thus, petitioners have not cited one case which supports their contention that the provisions of Bankruptcy Act Section 77(c)(13) do not conform with due process and equal protection requirements. No case exists, because the courts have uniformly recognized that a Reorganization Court must have the discretion to determine how various interests should be represented in such a way as to make the proceedings manageable. In view of adequate representation of the petitioners by the mortgage trustees and by the petitioners' filing of proofs of claim, no constitutional issue is presented by Orders Nos. 139 and 309 of the Reorganization Court. The reasonableness of such means of representation in the Reorganization Proceedings nullifies peti-

4. The petitioners have cited, as an additional case, "*Harrell v. Tobriner*, 394 U. S. 618." The petitioners have apparently mis-cited this case.

tioners' constitutional attack on Bankruptcy Act Section 77(c)(13). Cf. *Thompson v. Siratt*, 95 F. 2d 214, 217 (8 Cir. 1938), a case relied upon by petitioners.

Although petitioners are able to cite no case which supports their conclusory constitutional assertions, some discussion of procedure might clarify the issue. Bankruptcy Act Section 77(c)(13) specifically provides that any creditor is entitled to be heard at any time.[5] Since all matters come before the Reorganization Court on petitions and motions, the petitioners, through their local counsel, may inquire of the court personnel as to petitions filed and the times set for hearings. It would be impossible to send copies of all petitions and all notices of hearings to each of the thousands of creditors of the Debtor. To do so would only bog down the Reorganization Proceedings and greatly add to the expense of administration of the Debtor's estate. See *In re Denver & R.G. Western R. Co.*, 13 F. Supp. 821 (D. Col. 1936); *In re Long Island R. Co.*, 83 F. Supp. 974 (E. D. N. Y. 1949).

If a matter comes before the Reorganization Court in which the petitioners (or any other creditors) feel that they have a particular interest, such creditors may ask to intervene specially. Bankruptcy Act Section 77(c)(13); 5 Collier on Bankruptcy ¶ 77.08, pp. 493-494 (14th ed. 1970). The Court then considers whether or not the creditor is entitled to intervene specially. As an example of this, if a petition were to be filed with the Court relating specifically to property mortgaged as security for one or another of the bond issues partially owned by the petitioners, the petitioners might move to intervene specially as to that particular peti-

5. Apparently, this right has been overlooked by the petitioners in filing the instant Petition for Writ of Certiorari. See, e.g., petitioners' statement of the Question Presented in their Petition, i.e., ". . . whether it is constitutional to deprive a creditor of his right to be heard in a corporation [sic] reorganization . . . ." (Petition, p. 2).

tion. Such a method certainly does not violate constitutional due process or equal protection requirements. On the contrary, it assures that every creditor has the right to be heard in Court and to be a party to the proceedings where it is feasible or where the creditor claims a special interest in specific assets being considered by the Court.

CONCLUSION.

For the foregoing reasons, this cause should not be reviewed by the Court, and the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: April 1972